

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearings

Report prepared by: Annelise Judd

Public Hearing: Yes: X No:

Notices Mailed On: 5-30-03 Published On: 5-29-03 Posted On: 5-27-03

TITLE: **VARIANCE P-VA2003-2 and "S" ZONE APPROVAL-AMENDMENT P-SA2003-61**

Proposal: A request to exceed the maximum allowed impervious surface coverage in order to accommodate wood decking and other back yard amenities for a single family hillside residence

Location: 510 Vista Spring Court (APN 42-30-017)

RECOMMENDATION: **Recommend denial to the City Council.**

Applicant: Franklin and Celina Camillo, 510 Vista Spring Ct., Milpitas, CA 95035

Property Owner: Same as applicant

Previous Action(s): "S" Zone

General Plan Designation: Hillside Low

Present Zoning: Single-Family Residential in the Hillside ("R1-H")

Existing Land Use: Single-family dwelling

Environmental info: Exempt

Agenda Sent To: Applicant/Owner

Attachments: Site plan; photos; applicant's April 22, 2003, explanation letter and justification of variance; August 1, 2003, letter from Spring Valley Heights HOA Board of Directors; July 14, 2003, letter from Donald R. Peoples

This agenda item was continued from the Planning Commission's June 11 and 25, 2003, meetings, in order to allow time for the applicant to compile and submit new information regarding the project, and for the Planning Division staff to review and respond to this information. The new information

includes revised numbers describing the site's impervious surface coverage and a revised letter of variance justification (letter dated July 14, 2003).

BACKGROUND

The subject site is 510 Vista Spring Court, Lot 20 of Spring Valley Heights, which is accessed from Calaveras Road. This hillside subdivision was approved by the County of Santa Clara in the early 1980's and subsequently annexed into the City of Milpitas.

In 1988, the City Council approved Hillside site and architectural plans for a 3,820 square-foot single-family dwelling at the subject site. The approved site plan indicated a dwelling, driveway and vehicle turn-around, but no other structures or amenities within the building envelope. It did, however, indicate that the driveway was to be shared with the adjacent parcel at 514 Vista Spring Court, since that parcel does not have direct street frontage. An access easement was recorded for this purpose. The site plan also included a vehicle back-up area branching off of the driveway. The home was built during 1988-89.

In September 1992, the Milpitas City Council adopted the current Hillside ordinance, authorizing new impervious surface coverage limits not addressed under the old ordinance. The subject site was rendered "legal non-conforming" by this action, since the existing impervious area exceeded that allowed under the new ordinance, but complied with the ordinance in effect at the time of project approval in 1988.

The applicant bought the home in 1995, and in the year 2000 proceeded with construction of several back yard amenities—including a series of elevated wood decks, a flagstone patio, a trellis with barbecue, a water fountain, sports court, nearby paved area for dog kennel, tool shed and retaining walls—that added 2,268 square feet of impervious area to the site. These relatively recent additions were constructed without benefit of permits, and the applicant states that they were unaware of the City's permitting requirements and hillside impervious surface coverage limitations.

Site Description

The subject site is a 2.2-acre parcel within the Spring Valley Heights subdivision. The site is zoned Single-Family Residential in the Hillside ("R1-H"), as are the other Spring Valley Heights parcels to the south, east and west, and is developed with a 3,820 square-foot, two-story residence with a shared driveway and vehicle turn-around. The shared portion of the driveway is 21 feet wide and serves the project site at 510 Vista Spring Court and the single-family residence on the adjacent parcel at 514 Vista Spring Court. The City limit line extends along the site's northwest property line. Beyond this lies another residentially developed parcel within the jurisdiction of Santa Clara County, and accessed via Vista Ridge Drive, which is the same access for the rest of the Spring Valley Heights subdivision. Approximately 72% of the lots in this subdivision are developed or under construction with one single-family dwelling per lot.

THE APPLICATIONS

The variance application (permit number P-VA2003-2) is submitted pursuant to Section 58 ("Variances") of the Milpitas Zoning Ordinance. The variance request is to exceed the maximum allowed impervious surface coverage for this parcel (further increase the degree of non-conformity), in order to accommodate the recently constructed back yard amenities (patio, decking, etc.), as well as a proposed swimming pool.

The Hillside site and architectural review application (permit number P-SA2003-61) is submitted pursuant to Section 45 (Hillside Combining District) of the Milpitas Zoning Ordinance, which requires review prior to any grading, or construction of any new structure or modification that requires a building permit. The Hillside site and architectural review application addresses the physical improvements associated with the back yard amenities at this site. A building permit will be required for the decking and trellis, and may be required for some of the other back yard amenities.

PROJECT DESCRIPTION

The applicant requests variance approval to further exceed the maximum impervious surface coverage allowed by City ordinance for the subject site. This request is made in order to allow the recently constructed improvements at the rear and side of the house to remain on the site, and to allow a proposed future swimming pool (future pool is cited in the July 14, 2003, letter from the applicant's representative). The impervious surfaces associated with the rear and side yard improvements total 2,268 square feet. According to the July 14 letter, the swimming pool would encompass an additional 545 square feet of impervious surface area. With the exception of the basketball court and dog run, which lie at the right (east) side of the house, the improvements are located at the rear of the home. The future pool location has not been specified. The improvements include the following:

Yard Amenities (Identified on site plan as Area N)	Square Feet
• Flagstone patio	800
• Elevated wood decking, connected with stairs	440
• Dog kennel with chain link fencing	70
• Basketball court with chain link fencing	670
• Decorative water fountain	24
• Tool shed	96
• Built-in barbecue with trellis	80
• Seating	40
• Retaining walls	48
• Future swimming pool (not shown on site plan)	545
Total Square Feet	2,813

Explanation of Site Plan

The submitted site plan identifies the various site improvements, but does not show the future swimming pool discussed in the July 14 letter. The driveway is separated into four areas to reflect the following: one 14-foot wide driveway (area A) serving the subject dwelling; extra paving (area D) associated with a wider driveway width; the portion of the driveway that forks away to serve the adjacent parcel (area E); and a rectangular paved fire turn-around (area C). This division of the driveway paving is significant with regards to impervious area calculations, as explained below.

Variance Request and Justification

The applicant's request is to allow the existing backyard amenities to remain and to allow construction of a future swimming pool. The originally approved site improvements—house and driveway—encompass impervious surfaces that exceed the maximum allowed for this site.

Impervious surfaces associated with the rear/side yard improvements bring the site into further non-conformance regarding City ordinance-specified limitations. Once extraneous impervious surfaces (those that do not directly serve the subject site, as explained below) are deducted from the site total, remaining impervious surfaces would exceed the maximum allowable by 16.7% (11% if the swimming pool is excluded).

The July 14, 2003, letter cites the following factors as a hardship for this property, offering these factors as justification for the impervious surface exceedance: geology, topography, hydrology, easements and the necessity of providing primary access to a neighbor. This letter also notes the following:

- That the civil engineering design for the subdivision predated the current Hillside ordinance. Had the hillside regulations been anticipated when the subdivision was created in the early 1980's, the design could have been adjusted to create parcels and accessways that kept impervious surfaces to a minimum.
- That the subdivision incorporated 46 acres of common open space that is kept in a natural state.
- That there are no parks or community recreation areas in close proximity to the subject site, hence the need for private backyard amenities.

Impervious Area Requested to be Deducted from the Site

The applicant requests that the Planning Commission deduct the impervious surface square footage associated with extra driveway width beyond 14 feet (area D), as well as the vehicle back-up area (area C) and the portion of the driveway that forks off to serve 514 Vista Spring Court (area E). These impervious surfaces amount to 3,230 square feet. Once these areas are deleted, the remaining impervious surface coverage for the site (including the backyard amenities and the future swimming pool) becomes 11,188 square feet, compared to the maximum allowed 9,583 square feet—an overage of 16.7%. Without the 545 square-foot future swimming pool, the overage would be 11%.

The rationale behind the 14-foot driveway width is that the City's Hillside ordinance specifies 14 feet as a minimum driveway width for a single-family dwelling. The existing driveway measures 21 feet in width. The City's Fire Department requests a 20-foot width for a driveway that serves two homes. Had the driveway served only the subject site, it could have been as narrow as 14 feet. The applicant's assertion, then, is that the extra driveway width, most of which is required by the City (with the exception of one foot in width) because of the shared status of the driveway, creates additional impervious square footage that counts against their parcel, thus penalizing them.

Likewise, the vehicle back-up area (area C) is a required paved surface that counts against the applicant's total, but does not directly serve them. This area is intended to serve large emergency vehicles as they back up out of the adjacent parcel at 514 Vista Spring Court.

Letter of HOA Support

The applicant has submitted a letter from the Spring Valley Heights Homeowners Association, supporting approval of the variance for the back yard amenities. Staff customarily requests this supplemental submission material. HOA support is not required to grant a variance, and is only one piece of information that is taken into consideration with all the facts of the request when evaluating such an application.

ANALYSIS

The project does not comply with the impervious surface coverage limitation specified in the City's Hillside ordinance. Impervious surfaces include buildings, paved areas, wood decking (per Council interpretation) and swimming pools, among others. Impervious surfaces on the subject site include the house, driveway, paving and the back yard amenities, plus a proposed future swimming pool—totaling 14,418 square feet. The maximum allowed impervious surface area for this 2.2-acre hillside parcel is 9,583 square feet. The following table lists the approved, allowed, existing and proposed impervious surface areas, as well as impervious area overages, for the site:

Impervious surfaces	Square feet	% over limit ¹	% of lot area ¹
Total impervious surface on site, including existing backyard amenities and future swimming pool:	14,418	50%	15%
Maximum allowed impervious surface for site:	9,583		
Overage:	4,835		
Originally approved impervious surface (constructed in 1988—house, driveway, back-up area, but no backyard amenities—legal con-conforming impervious surface):	11,605	21%	12%
Legal non-conforming overage:	2,022		
Impervious surface area, without backyard amenities, and deducting the extraneous driveway area. This falls within the maximum allowed 9,583 square feet:	8,375	0%	8.7%
Overage:	0		

¹ The maximum allowed impervious surface coverage for the site is 10%, or 9,583 sq. ft.

Legal non-conforming zoning situations, such as impervious area overages, are allowed to remain on a site after adoption of a new ordinance that renders them non-conforming, so long as they are not enlarged in any manner. Once removed, they cannot be replaced with new impervious surfaces of a similar, or even lesser, square footage, if doing so would still render the site non-conforming, unless a variance is approved. In other words, there is no permanent grandfathering of impervious area excess square footage or quota, such that a parcel would have an "allowance" in excess of the new ordinance restriction with which to construct future impervious surface area improvements. If this were not the case, the subject applicant could construct even more impervious square footage, since the extraneous paved area exceeds the square footage of the amenities.

Variance Findings

The following standards are intended to guide the Planning Commission in evaluating a variance request and in imposing conditions upon the granting of a variance:

1.

1. A variance is intended to alleviate a hardship imposed by the zoning law arising from the particular size, shape, topography, location, surroundings, or other circumstances.

One of the hardships cited by the applicant (July 14, 2003, letter) is the impervious surface area associated with extraneous driveway and vehicle back-up area paving—impervious area that serves as primary access for a neighboring parcel and that does not serve the subject site but is counted against its impervious area allotment. The extraneous paving is defined by the applicant as the driveway paving that exceeds a 14-foot width, plus the portion of the driveway that veers off to serve the adjacent parcel at 514 Vista Spring Court, plus the emergency vehicle back-up area that is accessed from the driveway. The applicant's request is to deduct this area from the total impervious area on the site.

The July 14, 2003, letter also lists as a hardship the site's geology, topography, hydrology and easements. The area geology, hydrology and topography result in easements (storm drain, slope and geologic hazard easements) along the parcel's frontage, which force residential development toward the center of the parcel, resulting in a long driveway that uses up the site's impervious surface allotment.

The letter also notes that the civil engineering design for the subdivision (showing lot layout, configuration and access) predates the City's Hillside ordinance, and that this is the main reason for the site's inability to contain normal improvements without violating the maximum allowed impervious surface coverage regulations.

Staff Response: This finding cannot be made.

Deducting extraneous impervious area: Although Planning staff agrees in theory with the idea of deducting extraneous impervious surfaces that are required, but do not serve the subject site, it is important to understand whether such deductions render the finished project conforming or not, with respect to the impervious surface requirements of the City's Hillside ordinance.

Although a variance approval does not set a precedent, two previous similar variances are described here to illustrate the notion of conforming to the greatest extent possible. In one case (a new guest house approved in 1996 on an existing developed site), a shared accessway served three parcels but was located almost entirely on only one of those parcels, adding impervious surface area to that site's total calculation, without burdening the other parcels that benefited from it. In the second case (a new single-family residence approved in 2000), the parcel contained an area-wide City drainage facility and a portion of a neighbor's driveway—paved areas that counted against the site's impervious surface calculations, but provided no direct benefit to the subject site. In both cases, each project's impervious surface total—after deducting the extraneous areas and adding the proposed new project to the existing impervious area on the site—was within the maximum allowed impervious surface allotment for each site.

This is not the case for the subject site. In this instance, the impervious surface area total—after deducting the extraneous areas and adding the back/side yard amenities—still exceeds the maximum allowed amount by 16.7%.

Yet a third hillside variance considered by the Planning Commission involved a request to build a tennis court on a parcel that already exceeded its impervious surface allotment by a wide margin. The applicant's justification was that the flag-shaped lot and resulting long driveway (non-shared) and required vehicle turn-around created a hardship that unfairly burdened his parcel in terms of impervious coverage. The applicant offered to give up the right to build a "future" pool that had been

designated on the original site plan. Although the lot shape was irregular, the Commission denied the variance (and the Council upheld the denial on appeal) because of the overriding fact that the impervious surface coverage would still have exceeded the maximum allowed, even after deducting the square footage associated with the future pool and the entire driveway.

As of yet, the City has not approved any variance requests for projects where the resulting impervious area total, after the allowed deductions and additions, exceeded the maximum allowed. This supports the notion that a variance must represent the minimum departure necessary from the ordinance requirement.

Based on the above discussion, Planning staff recommends that, although a potential hardship exists on the subject site regarding extraneous impervious surfaces that do not directly serve the subject parcel—and Planning staff is supportive of deducting this extraneous driveway area from the site's impervious surface calculations—the hardship is not sufficient to allow approval of the requested variance in its entirety.

The applicant may wish to consider removing a portion of the existing backyard amenities, or replacing a portion of the existing driveway pavement with a grass-pave (or similar pervious) product, such as has been approved for the driveway of a recent home in the Spring Valley Heights subdivision (Lot 22, 442 Vista Ridge Drive). In that project approval, the Commission and Council allowed such driveway surfacing to be exempted from impervious surface calculations, thus freeing up impervious area allotment to devote to other site amenities. Such driveway surfacing would have to be to the approval of the City's Fire Department, as well as the Planning Commission and City Council.

Easements creating a long driveway: With respect to existing site easements necessitating a long driveway, thereby taking up a large portion of the site's impervious area allotment, staff notes that the easements take up approximately the front 120 to 135 feet of the parcel, while the home is situated 230 feet away from the front property line. Furthermore, the driveway follows a curved alignment that maximizes paved area. The residence could have been built closer to the easement line, with a more direct driveway and/or a better garage placement, thus minimizing impervious area.

The easement continues onto the adjacent parcel at 518 Vista Spring Court, to the southeast of the subject site. The Planning Commission reviewed a variance request for impervious surface coverage for this site in 1994, and concluded that the easement did not constitute a severe enough hardship to warrant variance approval. The applicant redesigned the project to comply with the ordinance.

Again, staff offers the suggestion of replacing a portion of the existing driveway with a grass-pave or other pervious surface in order to address this concern regarding a long driveway.

Civil engineering design: The concern regarding this subdivision's civil engineering design predating the City's Hillside ordinance is not unique in the Hillside area. All of the existing subdivisions within the Milpitas hillside were designed prior to adoption of the current Hillside ordinance. Hence this is a circumstance generally applicable to the whole district, and is therefore not a justifiable hardship burdening only this subdivision or lot (refer to variance finding #4).

2. *The basic test in each case is one of hardship. Variances should not be granted except in case of hardship.*

The applicant's justification of variance explains that the hardship associated with the extraneous paving results in the subject site being denied many of the amenities that other parcels enjoy. The July

14, 2003, letter cites as hardships the site's geology, topography, hydrology, easements, and the necessity of providing primary access for a neighboring parcel.

Staff Response:

This finding cannot be made. Given the discussion in item #1 above, and the fact that many hillside parcels have long driveways that limit the amount of new impervious surfaces for decks and other amenities, the subject site does not represent a unique case in terms of hardship.

3. Denial of the variance, under the circumstances presented, would deprive the particular parcel involved of benefits enjoyed by other parcels in the same district.

The applicant's justification of variance states that they will be unfairly denied of many benefits enjoyed by the neighboring parcels, in terms of suitable areas for family gatherings. The July 14, 2003, letter also notes that lot 19 (514 Vista Spring Court) has a greater amount of surface improvement, exclusive of driveway, on a smaller lot. The letter also notes that there are no parks or other community recreation areas in close proximity to the subject site.

Staff Response: This finding cannot be made. Not all the amenities constructed are typical benefits. Zoning laws are not required to ensure maximum development potential or the same development on all parcels. Planning staff agrees that strict application of the impervious surface coverage regulations would result in this parcel having no ability to add yard amenities. However, this is a function of the size of the home opted to be built, as well as its location on the parcel. Also, as mentioned above, it is possible to remove some of the backyard amenities or replace the existing paved driveway with a grass-pave material that is not counted as impervious area, and thus comply with the City's ordinance, or at least, minimize the degree of the variance requested.

Staff has encouraged the applicant to consider minimizing some amenities, in order to minimize the degree of variance requested. For example, tool storage could occur elsewhere on the site, or the shed could have been located on an impervious surface used for a different purpose. The sports court could have been combined with the vehicle back-up area to make it a dual purpose surface. The dog run could have been made of a pervious material. The family gathering areas (patio, decks) could have been reduced and combined with the BBQ area. Furthermore, the applicant's proposal includes adding even more impervious area in the form of a future swimming pool.

With regard to lot 19 (514 Vista Spring court), staff notes that the existing improvements conform to the approved site plan for that lot. The approved site plan predates the current Hillside ordinance. There are numerous Hillside parcels that are legal nonconforming with regard to impervious surface coverage; they have site improvements exceeding their maximum allowances, but such improvements were approved prior to adoption of the current Hillside ordinance.

With regard to the lack of community recreation areas in close proximity to the subject site, this is not a condition unique to this parcel, but applies to the other parcels in this subdivision and to some other Hillside subdivisions as well (refer to variance finding #4 below).

4. A variance should not be used to correct a condition or circumstance generally applicable to the entire district. The condition or circumstance should be one limited to a single or, at the most, a few parcels of property in a given district.

The applicant's justification of variance notes that the shared driveway situation is a very rare occurrence.

Staff Response: This finding cannot be made. Although staff supports the premise for this allowance for extraneous driveway paving and it is true that shared and chain-linked driveways within the City's Hillside district are not common (within Spring Valley Heights, there is one other instance of a shared, chain-linked driveway on Vista Norte Court, due to the existence of a landlocked parcel), this is not the only factor to be considered, and alone is not sufficient to grant the variance. This is particularly the case when impervious materials can be replaced with pervious ones, and/or other measures could be employed to reduce or minimize the amount of impervious coverage associated with the backyard amenities.

Also, as explained above, hardships cited regarding civil engineering design and lack of community recreational amenities are not unique to this parcel or subdivision. They apply to many properties throughout the Hillside district, thereby not meeting this variance finding.

5. *The granting of the variance must not injure other parcels of property in the same district, nor must it be materially detrimental to the public welfare.*

The applicant cites the uniqueness of the shared driveway situation, and implies that the shared driveway constitutes a public benefit because it negates the need for two separate driveways and the associated net increase in impervious surface coverage. The justification also states that the large driveway improves fire safety in the area. The justification adds that granting of the variance would not be a grant of special privilege inconsistent with limitations.

Staff Response: This finding cannot be made in its entirety. The idea that shared driveways can be a public benefit has merit with regard to overall impervious surface coverage, and Planning staff supports this idea. Staff, however, disagrees with the applicant's final statement that this variance approval would not grant a special privilege inconsistent with the ordinance limitation. Deducting the extraneous paved areas from the site's impervious surface total does not result in the project's compliance with the City's ordinance or meeting it to the greatest extent possible, as explained in item #1 above. Hence, approval of such a variance could be deemed a special privilege. If a special privilege is granted to one project, but not another, this could be construed as injuring other parcels where similar variance requests were denied, and not serving the public welfare properly in terms of fair and equal application of the law.

Hillside "S" Zone Approval

Concurrent with the variance application is the site and architectural review (Hillside "S" Zone Amendment application) for the back yard/side yard amenities. Other than the impervious surface coverage issue and the lighting, fencing and screening requirements explained below, these amenities comply with the City's Hillside ordinance requirements and General Plan. They comprise building materials and attractive design that complement the existing home.

Staff notes, however, that the submitted site plan does not show the future swimming pool location. If the Planning Commission approves the variance request, staff recommends that the applicant submit a site plan for Commission and Council approval showing the pool location and ultimate impervious square footage of the pool and any associated pool decking.

Sports Court: Outdoor Lighting, Fencing, Screening Requirement

The City's Hillside ordinance specifies that no artificial lighting is permitted for outdoor sports courts (MMC sec. XI-10-45.15-1). A pole light has been installed at the sports court on the side of the house. If the variance and "S" Zone applications for the back yard/side yard amenities are approved,

thus allowing these amenities to remain, then the light(s) must be removed, or a new variance application submitted addressing this code section.

Chain link fencing (approx. 5 feet tall) was installed around portions of the sports court and the adjacent paved area (dog run). This fencing type requires Planning Commission approval. Also, the Hillside ordinance requires that recreation courts be landscaped and screened so as to be unobtrusive from off-site (MMC sec. XI-10-45.14-2). If the Planning Commission approves the variance and the chain link fencing, staff recommends additional landscaping be installed along the front and east side of the sports court, per the ordinance requirement.

Fire Emergency Access and Outdoor Storage of Materials

The fork of the driveway that serves the adjacent parcel at 514 Vista Spring Court contains several piles of construction materials. These are intended for an approved room addition project and a roof repair project for 514 Vista Spring Court. The homeowner estimates that these construction projects will be completed prior to October 2003, by which time the materials will be removed.

The vehicle back-up area on the subject site must be kept clear at all times, because of its intended use to facilitate turn-arounds for large emergency vehicles serving 514 Vista Spring Court. Regardless of the Planning Commission's decision regarding the subject variance, staff recommends that this area be striped as a "no parking" area to the approval of the City's Fire Department.

Public Input

Staff received three phone calls from Spring Valley Heights residents in response to the public hearing notification. One caller called in support of the project (was HOA president during the applicant's preparation of their application materials; he signed the HOA letter and is the neighbor who is served by the shared driveway). Another expressed frustration regarding City review of applications after improvements have been built (current HOA president). The third called to request information regarding the application.

Environmental Review

This project is exempt per the California Environmental Quality Act (CEQA) section 15303, Class 3 categorical exemption regarding construction of small structures.

RECOMMENDATION

Close the Public Hearing. Recommend to the City Council to deny Variance P-VA2003-2 and "S" Zone application P-SA2003-61 with the findings listed below. Direct the applicant to stripe the vehicle back-up area as a "no parking" area to the approval of the City's Fire Department (staff contact: Albert Zamora, 408/586-3371).

Findings for Variance Denial

1. Although there is a degree of hardship regarding extraneous impervious surfaces that do not serve the subject parcel, it is not a sufficient hardship to support approval of the requested variance in its entirety. The site still maintains impervious surface coverage well in excess of ordinance requirements, even after the extraneous area in question is deducted from the calculation. In addition, existing easements on the subject site do not constitute a sufficient hardship in terms of house placement and driveway length. Thus, the variance requested is not

the minimum necessary to make reasonable use of the property and does not represent meeting the ordinance to the greatest extent possible.

2. As cited above, the hardship regarding extraneous impervious surfaces is not sufficient to warrant approval of the requested variance because the site would still be legal non-conforming regarding impervious surface coverage even if the extraneous paving square footage were to be deducted. Given this, and the fact that many hillside parcels have long driveways that preempt the addition of new impervious surfaces associated with decks and other amenities, the subject site does not represent a unique case in terms of hardship.
3. Denial of the variance would not deprive the parcel of benefits enjoyed by other parcels in the same district, because not all the constructed amenities are typical benefits, and zoning laws are not required to ensure maximum development potential or the same development on all parcels. Furthermore, the applicant has made no attempt to minimize or combine impervious surfaces, or to employ a pervious material for the driveway or other site amenities where such material could be advantageously used.
4. The subject site is not unique with regard to the site constraints, such as the presence of easements or driveway length. Although the shared driveway situation is not common in the City's Hillside area, this alone is not sufficient to grant the variance, particularly as site impervious materials could be replaced with pervious ones, and/or other measures could be employed to reduce or minimize the amount of impervious coverage associated with the backyard amenities.
5. Variance approval could represent the granting of a privilege to one project, where a clear and justifiable hardship does not exist, thus not properly serving the public welfare in terms of fair and equal application of the law.

Finding for "S" Zone Amendment Denial (Recommendation to City Council)

1. This "S" Zone Amendment application is denied because the required findings regarding the associated variance application cannot be made, and the variance is thus denied.

July 14, 2003

Donald R. Peoples, S.E.
President

Christopher S. Taplin, S.E.
Associate

Jeffrey A. Finn, S.E.
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Ms. Annelise Judd
City Of Milpitas Planning Division
55 East Calaveras Boulevard
Milpitas, CA 95035

RECEIVED
JUL 15 2003
CITY OF MILPITAS
PLANNING DIVISION

Subject: Request For Variance- Camillo Residence
510 Vista Spring Court, Milpitas, CA
Tract 6744- Lot 20

Ms. Judd:

Thank you for taking the time to meet with me and discussing the situation at the Camillo Residence. We are in agreement that the existing conditions at the Camillo Residence are in violation of the maximum impervious surface coverage stated in City Zoning Ordinance XI-10-45.17-3 for parcels smaller than three acres. However, it is my opinion that the conditions for variance are satisfied and this request for variance should be approved.

Background

The Camillo Family purchased their home in January 1995 and made no substantial exterior improvements until 2000. At the time of the purchase the total impervious area was 12.1 % of the area which exceeded the 10% maximum mandated by current City Ordinance. The reason for completing these improvements was to improve the use of their property by the entire family in a manner would be consistent with the neighborhood. The exterior improvements completed in 2000 were the source of complaint by a neighbor to the City; the neighbor did not complain or voice concern to the Camillo's until after construction was completed. It is important to note that the Camillo's did not ignore the City Ordinance since they were completely unaware of the provisions related to maximum amount of impervious coverage area. The Camillo's did not think they were doing anything outside the norm for the neighborhood and in fact considered their improvements modest (2.37% of the total area) compared to neighbors. The improvements completed in 2000 plus the desired installation of a small swimming pool (545 square feet including adjacent improvements) in the future is the ultimate planned improvements for the property (2.9% of the total area).

Description Of Existing Property

The lot in question comprises 2.2 acres (95,832 square feet) and contains a storm drain easement, a slope easement, a geologic hazard easement, and provides primary access to an adjacent property from Vista Spring Court (please refer to the attached fax from Annelise Judd dated June 17, 2003). These easements and the existing topography require that the residence be built toward the center of the property well away from Vista Spring Court resulting in a very

long driveway. Because the driveway is shared by the Camillo's and the adjacent property (Lot 19), the driveway does not take the most direct route to the Camillo Residence and is the standard 21' width (compared to 14' for a standard driveway for a single lot) for two lot access; this results in a very large driveway area of nearly 9% of the total lot area.

Civil Engineering Design For The Subject Lot And Tract 6744

It should be noted that the Civil Engineer's Design for this tract pre-dates the City Ordinance in question. It is this fact that is most responsible for the inability of this site to contain normal improvements without violation of the 10% maximum impervious surface area. Had the Civil Engineer anticipated these provisions, the street and lot configurations could have easily been adjusted to keep the necessary driveway surface area to below 2%. Further, Tract 6744 incorporated the use of a substantial amount of commonly owned property that would be kept in a natural state; the amount of the common property is 46.22 acres for 28 lots (1.65 acres per lot).

Summary

The size of the Camillo Residence and the amount of surface improvements (exclusive of the driveway and fire turnaround) are consistent with the neighborhood. The driveway is very large due to the effects of several site-specific factors as well as a Civil Engineering Design that made no attempt to reduce the driveway area. It is our opinion that the request to allow the Camillo's to maintain their current surface improvements as well as build a small swimming pool in the future is well justified in accordance with the established City policy.

Justification For Variance

- The variance would alleviate a hardship caused by several site-specific factors including geology, topography, hydrology, easements, and the necessity of providing primary access by a neighbor to his property.
- If the variance were denied, the Camillo family would not be able to fully enjoy their property and the Camillo children would not have an adequate place to play for a large portion of the year; it should be noted that there are no parks or other community recreation areas in close proximity to the Camillo Residence.
- If the variance were denied, the Camillo Family would be deprived of the benefits enjoyed by the neighbors (a quick view of the aerial photograph taken of Lot 19 shows a much greater level of surface improvement, exclusive of driveway, on a much smaller lot).
- Allowing this variance would not injure other parcels in the neighborhood; the large driveway is the major contributor to the impervious area usage provides access to the neighbor and improves fire safety in the area.

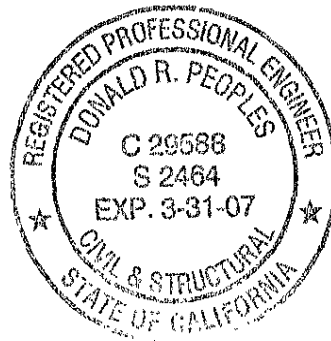
Ms. Annelise Judd
City Of Milpitas Planning Division
July 14, 2003
Page 3

We appreciate your time and attention to this matter. It is our hope that we have presented ample justification to allow for this variance. Should you have any questions or require any further clarification, please do not hesitate to call me.

Very Truly Yours,

 **FOR DON PEOPLES.**

Donald R. Peoples, RCE
President



Attachments: Camillo Coverage Excel Spreadsheet
Fax From Annelise Judd dated 6-17-03
Aerial Photograph Of The Area

CAMILLO RESIDENCE 510 VISTA SPRING COURT

Lot Size: 2.2 Acres (SF)	95,832		
IMPERVIOUS AREA			
Original Roof & Deck Area (SF)	3,108	3.24%	Within Community Norms
Original Driveway (SF) <i>Handwritten: 8,497</i>	8,497	8.87%	Outside Community Norms
TOTAL ORIGINAL IMPERVIOUS AREA	11,605	12.1%	
Improvements From 2000 (SF)	2,268	2.37%	
Planned Improvements-Small Swimming Pool (SF)	545	0.57%	
TOTAL IMPROVEMENTS	2,813	2.9%	Within Community Norms
TOTAL IMPERVIOUS AREA (SF)	14,418	15.0%	
Common Area (Assessed With 28 Lots)	46.22 acres	1.65 acres per lot	

NOTE TO PLANNING COMMISSION:

The following materials reference impervious surface area square footages that have since been revised by the applicant. Please refer to the site plan, the letter dated July 14, 2003, by the applicant's representative, and the Planning Division staff report for updated square footage numbers.

Variance Application Explanation

RECEIVED
APR 24 2003
CITY OF MILPITAS
PLANNING DIVISION

April 22, 2003

City of Milpitas
Planning Division

Subject: Variance Application Explanation

In January 7, 1995, our family moved into our new home, at 510 Vista Spring Court. The home is beautiful. The land is vast. The view is breathtaking. However, the backyard was all dirt, except for concrete slabs here and there and some walk ways. Each time rainy season comes; the backyard will be muddy and slippery. During summer time, the mud would dry and the backyard would be dusty dirty with all kinds of airborne grime. It is at its worst on occasion of gusty winds which is very common and frequent in our area. Tall wild grass and weeds grow to more than 8ft. tall. Every year we had to hire someone to cut the grass from our backyard to avoid hazards of fire. For all those years, we were not able to use our backyard for any family gathering.

From 1995-1999, each time it will rain hard, erosion is evident in our backyard. The soil is eroding fast. In early part of year 1998, Frank and I thought we need to do something before any more erosion happen. Despite being financially short, we had to do something. In late 1998, we applied for swimming pool as part of our landscaping plans. We did not know why we were denied. We only found out from the Anthony pools company that our property is not designed for a pool. We believed him. Anthony pools ended up building the pool of our neighbor who got approved by the city, just about the same time of our application. We still did not realize why we were denied, and our neighbor was approved. Our neighbor advised us to do other form of landscaping, other than pool.

Incidentally, in early 2000, we extended our full assistance to a Chinese guy (with very little English) whose 89 year old mom was confined in the hospital. This Chinese guy offered us his service to help Frank in decorating and constructing our backyard with his intention on returning the favor we extended to him. It was completed in June of 2000. Erosion ceased. The improvement has added to the aesthetic and visual character of our backyard structure.

After everything was done, our neighbor informed us that we are exceeding our impervious surface allowance and that we are in violation of some city ordinance. We told him we do not know anything about impervious surfaces and we asked him to assist us in understanding it. We asked him why he did not say anything to us while the work is being done, and he did not say anything. He told us to apply for variance and we asked him how to go about it. Instead, he called the city and reported our violations in several occasions, August 10, September 8 and 12, 2000, November 6, 2000 and March 20, 2001. The city came to our premises on September 25, and November 7, 2000. and told

us about the complaint of our neighbor. We sought advice from proper sources and we tried to research and read our CC&R which we honestly did not read then, when we bought our house. There are many parts we did not understand. Frank Guido, from the City office, helped us identify the issues pertaining to our case and assisted us to understand the limitations and the city ordinance. We then met with City officials including Mayor Joe Esteves on several occasions and commenced the VARIANCE APPLICATION per their full advise.

The proposal is as follows:

PROPERTY: 510 VISTA SPRING COURT, MILPITAS
2.2 Acre = 95,832 sq.ft.

IMPERVIOUS SURFACE (Impermeable)
MAXIMUM ALLOWABLE – (10%) 9,583 sq. ft

EXISTING PRIOR TO ORDINANCE 199311,553.5 sq. ft.

AREA "A" = 7,949.90 sq. ft.

AREA "C" = 565 sq. ft.

AREA "D" = 3,039.50 sq. ft.

Total Existing : 11,553.5 sq. ft.

LEGALLY NON - CONFORMING 1,970.50 sq. ft

Added in Yr. 2000 – Total of 2,460 sq. ft.

Flagstone paving 1,040 sq. ft

Decks and stairs 440 sq. ft.

Dog Kennel 70 sq. ft.

Basketball court 670 sq. ft.

Fountain, Trellis, shed, ret walls 240 sq. ft

Total: 2,460 sq. ft.

PROPOSED PROJECT

VARIANCE APPLICATION – Please refer to Illustration (Site Plan)

- 1. Deduct AREA “D” driveway from top of the hill down to where the front of the house of the lot #19. (Please see drawing)**

Area D = 3,039.50 sq.ft.

Note: 45.11-1 – states as follows

Privately owned and maintained access from the public road to each single family dwelling shall be a minimum of 14 ft. in width.

The 21 ft. wide driveway serves 2 residences. There is an existing easement that serves Lot 19.

The driveway, 21 ft. X 250 ft. = 5,250 sq. ft., 3,500 of which is ordinance conforming, and the 1,750 sq. ft. of which is eaten up by other parcel, lot # 19 in particular. The **AREA “D”** which includes the 1,750 sq. ft, clearly illustrates that it should be credited to us because we are being penalized on the existence of this impervious surface that clearly shows shared usage of the driveway because of the easement of lot 19. This **AREA “D” 3039.50 sq. ft.** impervious surface that exists because of adjacent parcel should not be counted against our impervious total. The driveway clearly shows that it serves 2 parcels. Theoretically, it should be 50/50 % sharing of impervious surface.

- 2. Deduct the TONGUE –(565 sq, ft,) Not needed for the turn around of the Fire Truck for our property.**

The tongue which was initially built for emergency fire truck turn around is supposed to be serving our property. However, we noted that the front of our property will well serve the purpose for emergency fire truck turn around.

Note: We requested the Fire Marshal to conduct a 4 pt turn around test in front of our house by the entrance to determine the possible non-usage of the tongue (see picture) in fire emergencies. The test was done on 2 occasions, March 21 and March 25, 2002. Based on the report of **Albert Zamora, Assistant Fire Marshall**, who did the actual 4 point turn test of the biggest fire truck, the driveway pavement in front of the house conforms to the fire ordinance requirement.

Note: 45.11-3 states: All dwelling units shall provide an onsite area for vehicles to turn around if served by a driveway over one hundred fifty feet in length to meet the Fire Department requirement.

According to Fire Marshal, each parcel should have their fire truck turn around. The existing tongue has been serving the adjacent parcel (lot 19) and again penalizing our property rights for impervious surface. This is hardship on our part.

Therefore, we ask, the tongue could be included in the variance total sq. footage. Which is = to 565 sq. ft.

CONCLUSION: Situations 1 and 2 clearly shows we are deprived of privileges enjoyed by other property owners in our vicinity because of the special circumstances applicable to our property because of the existence of the driveway (see above measurements,) serving our property and adjacent parcel. Granting of the variance does not and will not deprive the other parcels from benefits enjoyed by all others, nor will it be detrimental to the public welfare. The condition is unique and this occurrence of easement is not a common occurrence.

With the above total sq. ft. of 3,604.50, this will already cover the excess of 2,460 sq. ft. of impervious surface we added in yr. 2000.

For our decks — It is but normal for a growing family to have a deck. We deem the deck to be non-detrimental to the surroundings of the vicinity. The deck is structured as not to be viewed by any neighboring people from the rear because of the existence of tall trees and is not on viewing distance from any home. The deck is measured at 440 sq. ft., 45.17-2 states that Impervious surface are meant to include surfaces that will not allow or will greatly reduce the penetration of water into the ground. Our deck is an elevated deck that does not at all cover the surfaces of the ground. It is built with sturdy redwood wood. The height of the deck does not extend above the crest line site line. The deck does not constitute invasion of privacy, or unreasonable interference with views, light and air, nor create adverse impacts upon aesthetic character of neighboring residential structure. To reiterate, the size of the deck does not exceed the 1,200 sq. ft. limitations stated in 45.17-5.(Ord.38.672, 9-15-92)

Upon grant of variance, we shall proceed to meet the following

MMC II – 1 – 17 –14
MMC II – 1 – 17 – 01
MMC II – 1 - 21

With the above explanation, we request for your kind consideration.

Sincerely,

Franklin Camillo
Celina Camillo

Justification of Variance

RECEIVED

APR 24 2003

CITY OF MILPITAS
PLANNING DIVISION

City of Milpitas
JUSTIFICATION OF VARIANCE

(408) 586-3279

Planning Division

455 E. Calaveras Boulevard

Milpitas CA 95035

Applicant should complete the statements presented below as thoroughly as possible since it will help determine whether sufficient justification is present to permit the Planning Commission to grant the variance. The Planning Commission will base its decision on all evidence presented, will consider any precedent which might be established, and may attach conditions to an approval. Attach additional sheets of paper if necessary.

PLEASE SEE ATTACHED SHEETS

A Variance is intended to alleviate a hardship imposed by the zoning law arising from the particular size, shape, topography, location, surrounding, or other circumstances.

The basic test in each case is one of hardship; variances should not be granted except in case of hardship.

Denial of the variance—under the conditions or circumstances presented—would deprive the particular parcel involved of benefits enjoyed by other parcels in the same district.

A variance should not be used to correct a condition or circumstance generally applicable to the entire district; the condition or circumstance should be one limited to a single or, at the most, a few parcels of property in a given district.

The granting of the variance must not injure other parcels of property in the same district, nor must it be materially detrimental to the public welfare.

JUSTIFICATION OF VARIANCE

1. A variance is intended to alleviate a hardship imposed by the zoning law arising from the particular size, shape, topography, location, surrounding, or other circumstances.
 - a. The extraneous amount of impervious surface counted against our allowance is causing us extreme hardship :

The portion of the driveway (Please see illustration) branches to proceed to lot 19 which clearly shows significant square footage absolutely being used by lot 19.

- b. The extraneous amount is eaten up by the other parcel, lot 19, having an easement on our property. We are penalized by the zoning law on the existence of the driveway being counted as impervious surface against our property, driveway which is clearly being shared 50/50 by our neighbor (Lot 19)
2. The basic test in each case is one of hardship; variances should not be granted except in case of hardship.

It has caused us hardship because we are unfairly denied of many amenities other parcels are enjoying in their homes because our lot contains extra impervious surface which serves the adjacent parcel. In particular, lot 19 is not being charged with any amount of impervious surface despite his shared usage of our existing impervious surface. (which is the driveway) So lot 19 could have all kinds of impervious surface addition to his property, whereas we are being denied 100% of any improvement whatsoever.

3. Denial of the variance – under the conditions or circumstances presented – would deprive the particular parcel involved of benefits enjoyed by other parcels in the same district.

If the application for variance is denied, we will be unfairly denied of many benefits being enjoyed by the neighboring parcels. It will deprive my family of appropriate area for family gatherings; play and many outdoor hours which all other neighbors are benefiting from. It is also a financial hardship on our part. The denial will mean removal of our deck which is being enjoyed by our family, removal of which will pose financial burden.

4. A variance should not be used to correct a condition or circumstance generally applicable to the entire district; the condition or circumstance should be one limited to a single or, at the most, a few parcels of property in a given district.

Our condition is unique. Our shared driveway is a very rare occurrence
This occurrence of “easement” is not a common occurrence

5. The granting of the variance must not injure other parcels of property in the same district, nor must it be materially detrimental to the public welfare.

- a. Again, Our condition is unique. And not a common occurrence .
- b. Moreover, the application for variance is supported by lot 19, whose letter of support is attached with this application.
- c. The easement of lot 19 is a necessity because lot 19 does not have an access to Vista Spring Court. If 2 parcels were to build 2 separate driveways, it will have a net increase of impervious surface as a whole.
- d. Granting of the variance is not a grant of special privilege inconsistent of limitations.

August 1, 2003

Spring Valley Heights HOA Board of Directors
3550 Vista Norte Ct.
Milpitas, CA 95035

Frank and Celina Camillo
510 Vista Spring Ct.
Milpitas, CA 95035

Dear Frank and Celina,

The Board of Directors of Spring Valley Heights has reviewed your request for a variance, regarding impervious area, which is currently pending with the city of Milpitas. The Board is generally supportive of your request on the condition that the improvements and modifications to your property are in compliance with the requirements, regulations, and building codes of the City of Milpitas.

Please let us know if you require any additional information.

Sincerely,

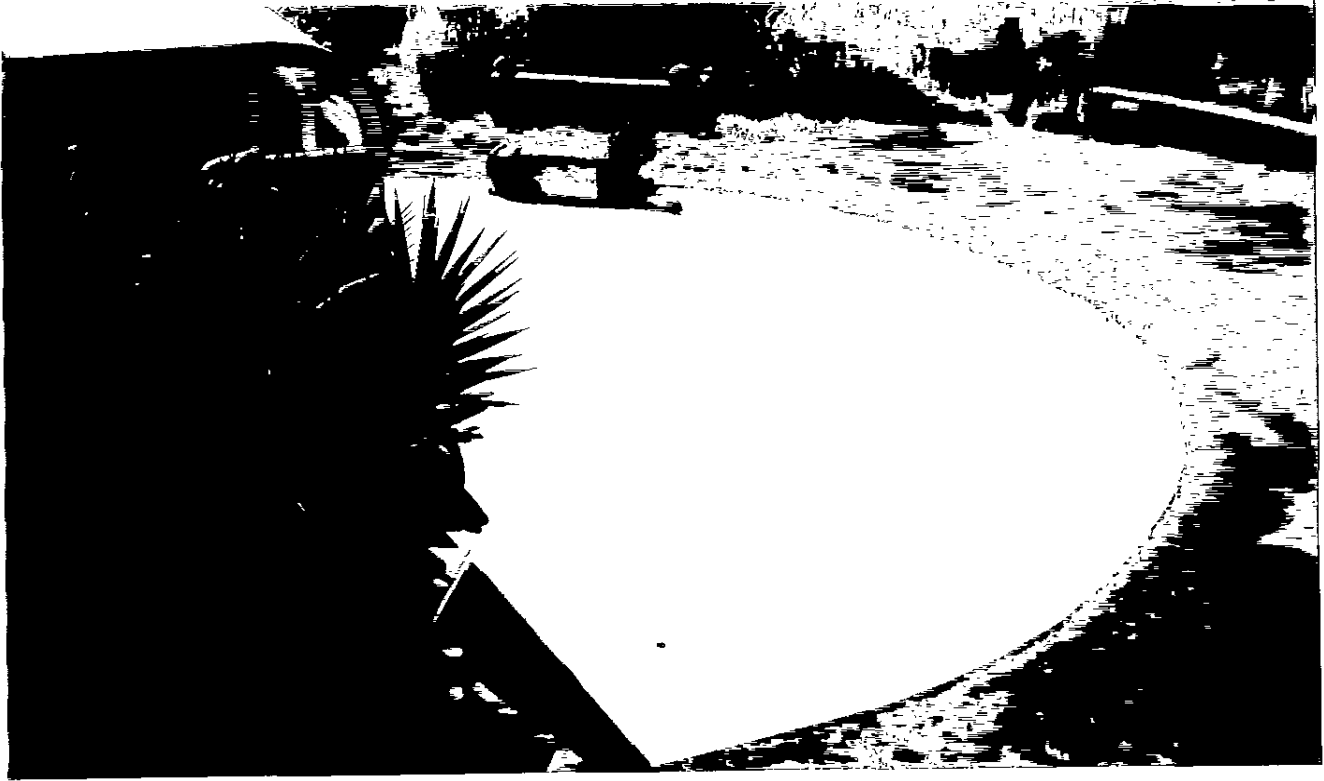
A handwritten signature in cursive script, appearing to read "R. Tebbeling".

Spring Valley Heights HOA Board of Directors

CONTENTS:

PAGES

1. Flagstone –	800 Sq. ft.
2. Basketball Court –	670 Sq. ft.
3. Dog Kennel –	70 Sq. Ft.
4. Deck –	440 Sq. ft.
5. Fountain –	24 Sq.ft. and
Shed –	96 Sq.ft.
6. Seating –	40 Sq. ft.
Keystone -	48 Sq. ft.
7. BBQ Grill –	80 Sq. ft.
8. Driveway – North View	
9. Driveway – South view showing the tongue	
10. Turn Around for Fire Truck – 4-Pt. Turn Tested by Fire Marshal	

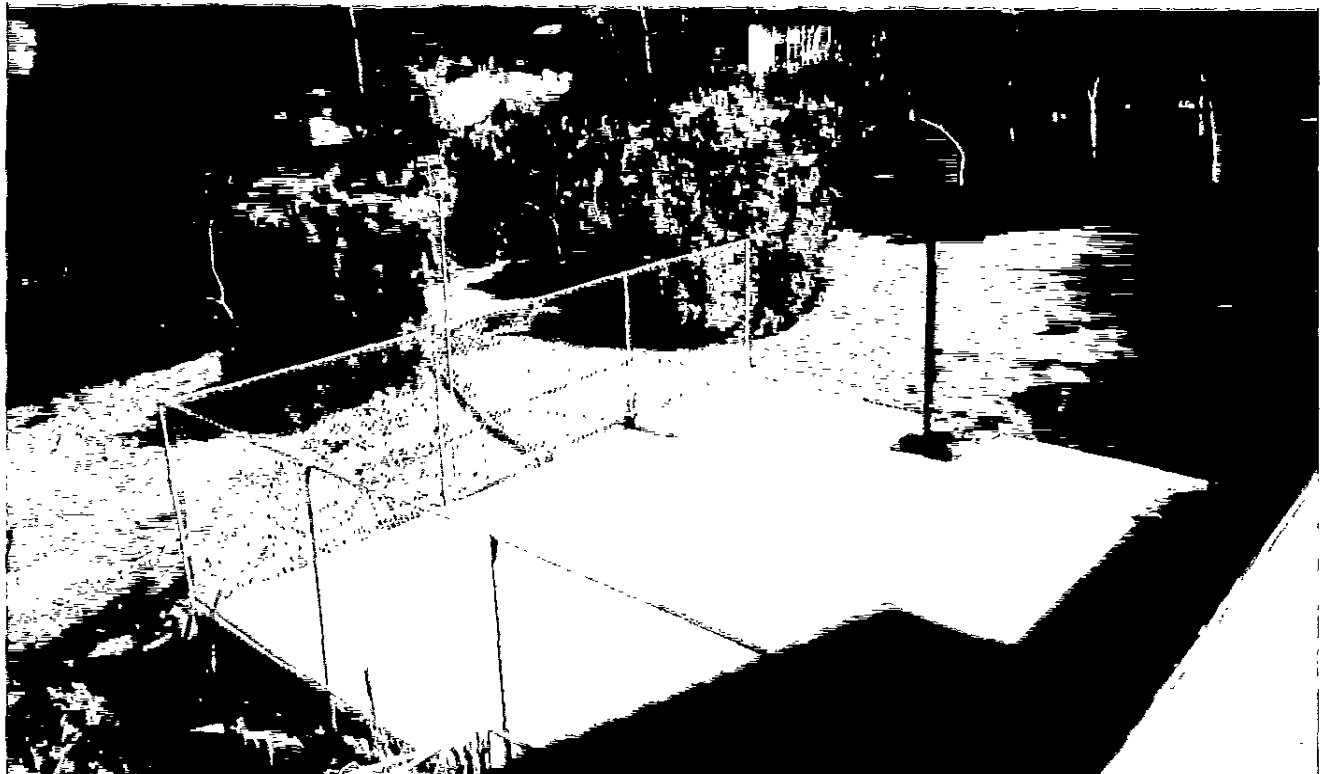


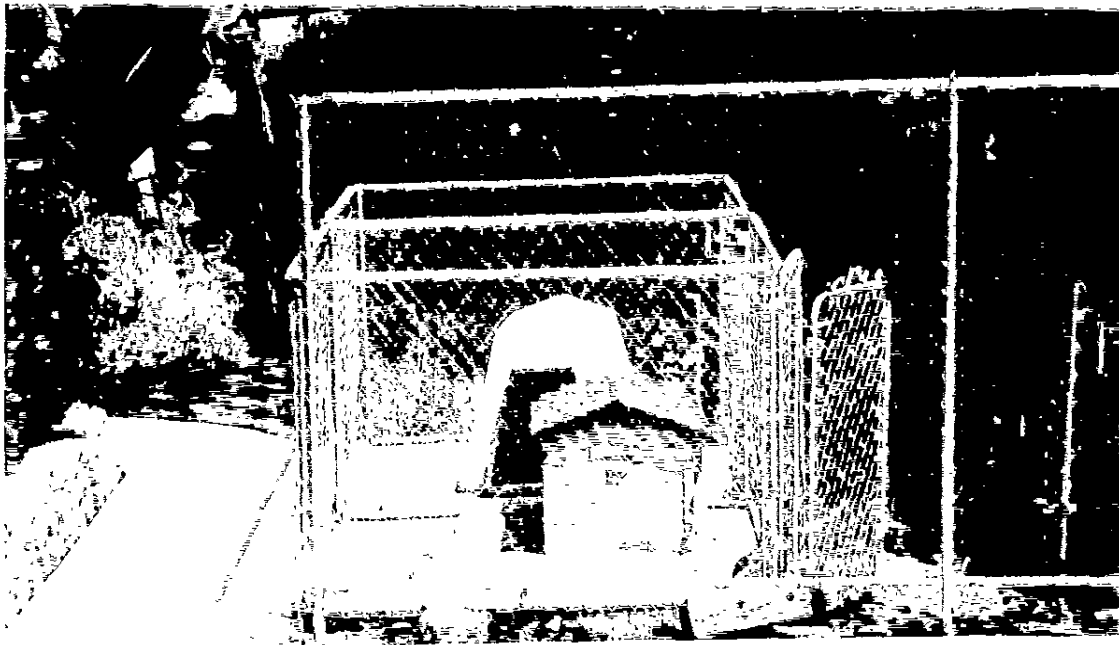
Flagstone 800 sq ft.



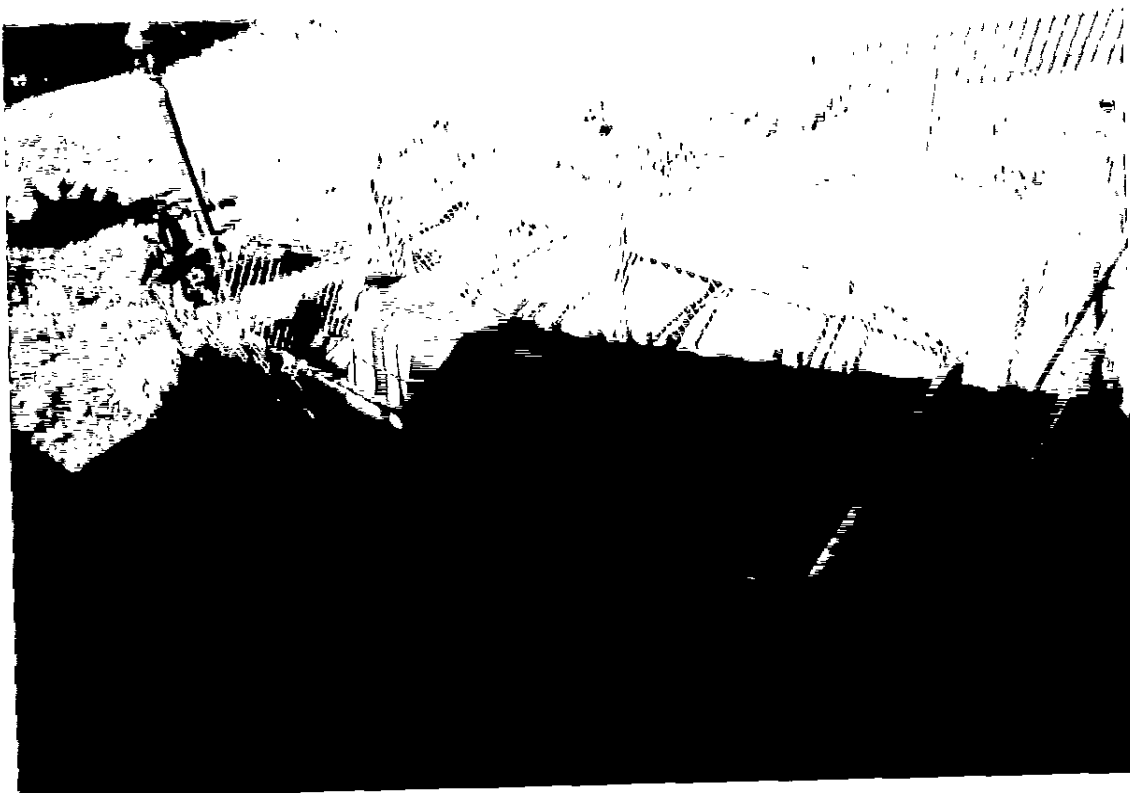


Basketball Court 670 sq. ft





Dog Kennel 70 sq. ft.





WOOD DECK - 440 SQ. FT.





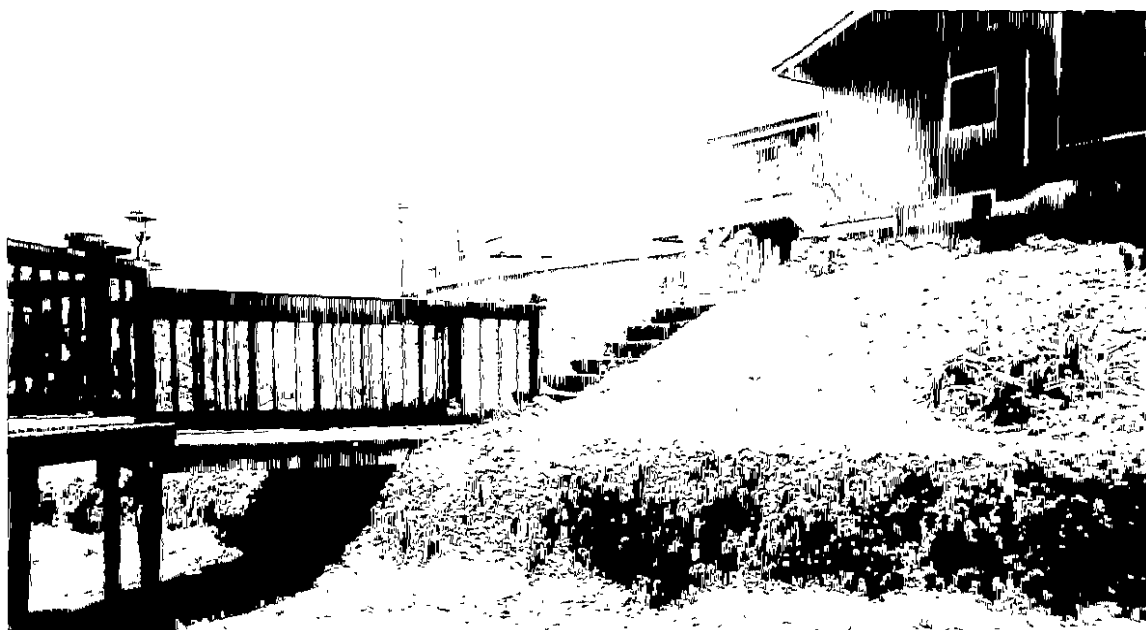
F
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24 sq
ft.



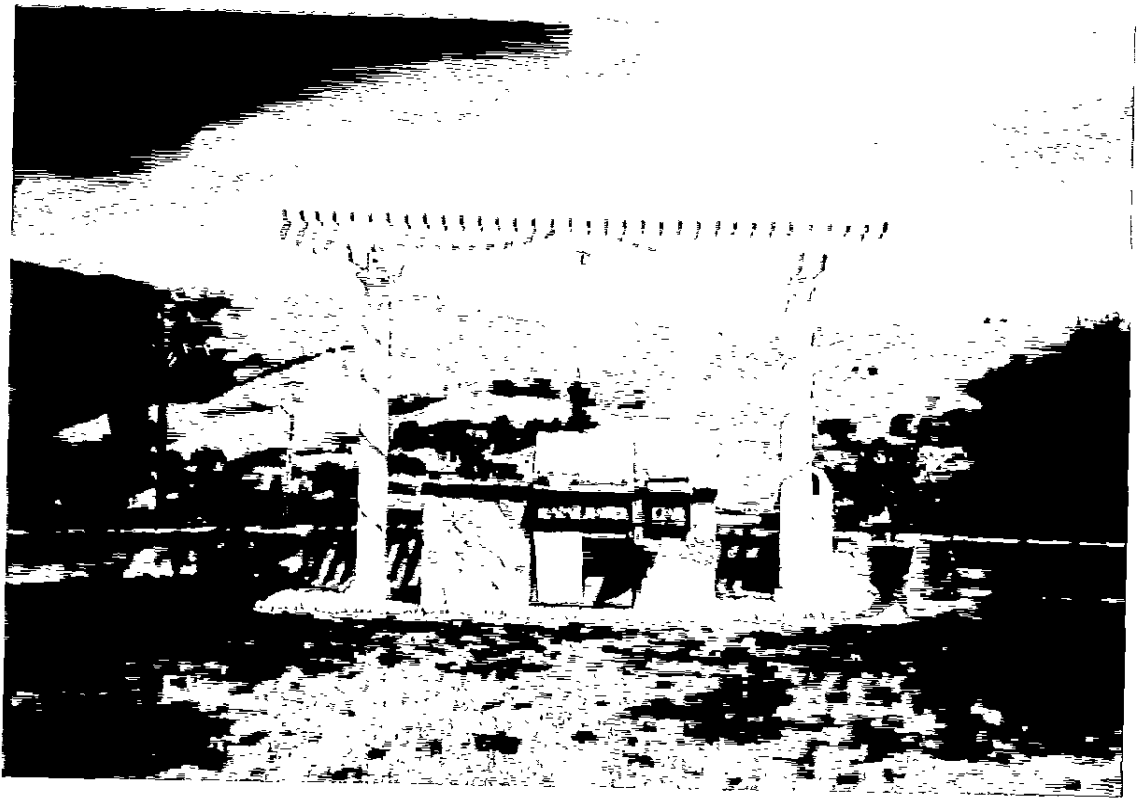
S
H
E
D
(8x12)

96 sq ft.



SEATING: 43 ^{ft}

Runway = 48 ^{ft}



BBQ Grill (5x16) 80 sq ft.





Driveway North View





Driveway – South view / Tongue = 565 Sq. Ft.



Turn Around for Fire Truck

